

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable Brooks P. Goldsmith, Circuit Court Judge
2011-GS-29-530
Appellate Case No. 2013-000411

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DEC 17 2013

Respondent SC COURT OF APPEALS

THE STATE,

vs.

JASPER HAGGINS,

Appellant.

MOTION TO DISMISS APPEAL PURSUANT TO STATE v. ISAAC

Respondent ("the State"), through its undersigned counsel, would respectfully move to dismiss the appeal from as an improper interlocutory appeal from an order denying immunity under the Protection of Person's and Property Act pursuant to State v. Isaac, Op. No. 27302 (S.C. Sup. Ct. filed August 21, 2013) (Shearouse Adv. Sh. No. 37 at 15, 17). Respondent would show this Court the following:

I.

On December 20, 2012, the Appellant, Jasper Haggins, through counsel William P. Frick, Deputy Public Defender for the 6th Judicial Circuit filed and served its Motion to Dismiss pursuant to the Protection of Person's and Property Act, S.C. Code § 16-11-410, et seq. The Appellant's motion was heard from January 14, 2013 before the Honorable Brooks Goldsmith. On February 6, 2013, Judge Goldsmith entered his Order denying the request to bar prosecution.

On February 8, 2013, the Appellant filed his notice of appeal from the orders denying his motion to dismiss pursuant to the Protection of Persons and Property Act.

The matter is presently pending the filing of the Initial Brief of Appellant which is due December 18, 2013.

II.

In South Carolina, the right to appeal is conferred by S.C. Code Ann. § 14-3-330. State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986). Ordinarily, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms of Section 14-3-330. State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see Miller, 289 S.C. at 426, 346 S.E.2d at 705 (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”). In criminal cases, judgment for a criminal defendant is not final until a sentence is imposed. State v. Robinson, 287 S.C. 173, 174, 337 S.E.2d 204, 204 (1985); see Berman v. United States, 302 U.S. 211, 212 (1937) (“Final judgment in a criminal case means sentence. The sentence is the judgment.”). Thus, a criminal defendant may **not** appeal until **after** a sentence has been imposed. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986).

III.

In State v. Isaac, the South Carolina Supreme Court instructed that an order denying a request for immunity from prosecution under the South Carolina Protection of Persons and Property Act does not fall within any category of orders that are immediately appealable under Section 14-3-330. State v. Isaac, Op. No. 27302 (S.C. Sup. Ct. filed August 21, 2013) (Shearouse Adv. Sh. No. 37 at 15, 17). In reaching that conclusion, the Supreme Court explained that an order denying a request for immunity was not a final order and was not an interlocutory order or decree in a court of common pleas granting, continuing, modifying, or

refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver. Id., (Shearouse Adv. Sh. No. 37 at 18-19). As a result, the Supreme Court held that “the denial of a request for immunity under the Act is not immediately appealable.” Id., (Shearouse Adv. Sh. No. 37 at 21).

IV.

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In the case sub judice, Appellant is appealing from Judge Goldsmith’s orders denying his motion to dismiss based upon request for immunity from prosecution. However, Appellant’s case has not yet gone to trial, and Appellant has not yet been convicted or sentenced. See Wilson, 387 S.C. at 603, 693 S.E.2d at 926 (recognizing that the general rule is that a criminal defendant cannot appeal until he has been convicted and sentenced). Accordingly, Appellant’s appeal is an improper interlocutory appeal from an order that is not immediately appealable and should be dismissed, and Appellant’s case should be remanded for trial. See Isaac, (Shearouse Adv. Sh. No. 37 at 23) (instructing that the denial of a defendant’s request for immunity pursuant to the South Carolina Protection of Persons and Property Act is not subject to immediate appeal, dismissing Isaac’s appeal, and remanding for trial); see also State v. Hubbard, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (“The appellants have not yet gone to trial. An appeal in a criminal case must attend the final judgment rendered on the indictment. No final judgment has occurred in this case and the order appealed from is interlocutory. Therefore, we dismiss the appeal and remand the case for trial.” (citations omitted)).

WHEREFORE, Respondent prays that this Court will dismiss Appellant’s notice of appeal and appeal as an improper interlocutory appeal from an order that is not immediately appealable; remand the case to the circuit court for trial; hold this appeal in abeyance pending a

ruling on Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

By: 

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December 17, 2013

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THE STATE,

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vs.

JASPER HAGGINS,


Appellant.

PROOF OF SERVICE

I, Donald J. Zelenka, certify that I have served the within Motion to Dismiss Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek
Division of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 17th day of December, 2013.



Donald J. Zelenka
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Columbia, SC 29211
(803) 734-3601



ALAN WILSON
ATTORNEY GENERAL

December 17, 2013

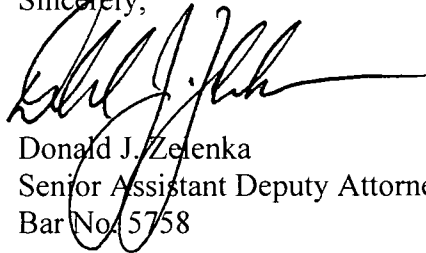
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE: State v. Jasper Haggins – Appellate Case No. 2013-000411

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Dismiss Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,



Donald J. Zelenka
Senior Assistant Deputy Attorney General
Bar No. 5758

DJZ/
Enclosures

cc: Robert M. Dudek
S. C. Attorney General Office Victim Services
Honorable Douglas A. Barfield, Solicitor of the Sixth Circuit.

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